

EXHIBIT 3

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 IN RE: OpenAI INC. COPYRIGHT
4 INFRINGEMENT LITIGATION

25 MD 3143 (SHS) (OTW)

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5
6 New York, N.Y.
7 May 22, 2025
8 10:10 a.m.

9 Before:

10 HON. SIDNEY H. STEIN,

District Judge

11 HON. ONA T. WANG,

Magistrate Judge

12 APPEARANCES

13
14 SUSMAN GODFREY LLP
Attorneys for Authors Guild and Alter Class Plaintiffs

15 BY: JUSTIN NELSON

-and-

16 LIEFF CABRASER HEIMANN & BERNSTEIN LLP

17 BY: RACHEL GEMAN

-and-

18 COWAN DeBAETS ABRAHAMS & SHEPPARD LLP

19 BY: SCOTT J. SHOLDER

-and-

20 CAFFERTY CLOBES MERIWETHER & SPRENGEL LLP

21 BY: BRYAN L. CLOBES

22 SUSMAN GODFREY LLP

Attorneys for Plaintiff The New York Times Company

23 BY: DAVIDA BROOK

24 ROTHWELL FIGG ERNST & MANBECK PC

Attorneys for Plaintiff Daily News LP and
The New York Times Company

25 BY: STEVEN M. LIEBERMAN

JENNIFER MAISEL

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and Petryazhan Ruslana

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BY: ANNETTE L. HURST

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FAEGRE DRINKER BIDDLE & REATH LLP

BY: JEFFREY S. JACOBSON

-and-

MORRISON & FOERSTER LLP

BY: JOSEPH C. GRATZ

Also Present: Guy Ruttenberg, Esq.

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1 (Case called)

2 THE DEPUTY CLERK: Counsel, please state your names
3 for the record.

4 MR. NELSON: Good morning, your Honors.

5 THE COURT: Good morning.

6 MR. NELSON: Justin Nelson from Susman Godfrey,
7 representing the consolidated Alter and Authors Guild classes.

8 Thank you.

9 THE COURT: Good morning.

10 MS. GEMAN: Good morning, your Honors.

11 Rachel Geman; Lieff, Cabraser, Heimann & Bernstein,
12 also representing the Authors Guild and Alter class plaintiffs.

13 MS. BROOK: Good morning, your Honors.

14 Davida Brook of Susman Godfrey, on behalf of *The New*
15 *York Times*. And while I'll allow my colleagues to introduce
16 themselves, I will note that my client is here with us today as
17 well; we have Diane Brayton, Karen Chesley, and Demetri
18 Blaisdell, all from *The Times*.

19 THE COURT: Where are they?

20 MS. BROOK: In the audience.

21 THE COURT: All right. Good morning.

22 MR. LIEBERMAN: Good morning, your Honors.

23 Steven Lieberman from Rothwell Figg, on behalf of *The*
24 *New York Times* and *The Daily News* plaintiffs.

25 THE COURT: Good morning.

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1 MS. MAISEL: Good morning, your Honors.

2 Jennifer Maisel from Rothwell Figg, also on behalf of
3 *The New York Times* and *The Daily News* plaintiffs.

4 MR. DIAMOND: Good morning, your Honor.

5 Julian Diamond from the law firm Bursor & Fisher, on
6 behalf of Petryazhan Ruslana, also known as the *Millette*
7 matter.

8 THE COURT: Thank you.

9 MR. BOIES: Good morning, your Honor.

10 David Boies, of Boies Schiller Flexner, on behalf of
11 the Tremblay class plaintiffs.

12 With me today are my partners Max Pritt and Jesse
13 Panuccio.

14 THE COURT: Where are they?

15 All right. Good morning.

16 MR. SAVERI: Good morning, your Honor.

17 I'm Joseph Saveri, Joseph Saveri Law Firm. Also we
18 represent the Tremblay Northern District of California
19 consolidated class plaintiffs.

20 I'm here with my partner Christopher Young.

21 THE COURT: Good morning.

22 MR. SAVERI: Good morning.

23 MR. TOPIC: Good morning.

24 Matt Topic, Loevy & Loevy, for Center for
25 Investigative Reporting, The Intercept, Raw Story, and

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1 alternate.

2 THE COURT: Good morning.

3 MR. COONCE: Good morning, your Honors.

4 Lance Coonce with Klaris Law, representing the Ziff
5 Davis entities. And with me are several of my colleagues from
6 Klaris: Guy Ruttenberg, from Ruttenberg IP; and George
7 Wukoson, for my client Ziff Davis.

8 THE COURT: Good morning.

9 And Ziff Davis just hit the MDL docket this morning or
10 last night.

11 MR. GRATZ: Good morning, your Honor.

12 Joe Gratz from Morrison & Foerster, on behalf of
13 OpenAI.

14 MR. GOLDBERG: Good morning, your Honors --

15 THE COURT: Just a moment.

16 I have Mr. Gratz on the appearance sheet as with Keker
17 & Van Nest. That's wrong?

18 MR. GRATZ: Yes, your Honor. I'm with Morrison &
19 Foerster. Thank you, your Honor.

20 MR. GOLDBERG: Good morning, your Honors.

21 Nick Goldberg of Keker, Van Nest & Peters for OpenAI.

22 MR. SLAUGHTER: Good morning, your Honors.

23 James Slaughter Keker, Van Nest & Peters, on behalf of
24 OpenAI.

25 THE COURT: Good morning.

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MS. HURST: Good morning, your Honor.

Annette Hurst, from Orrick, Herrington & Sutcliffe, on behalf of Microsoft.

MR. JACOBSON: Good morning, your Honors.

Jeffrey Jacobson from Faegre Drinker, also on behalf of Microsoft.

MR. GASS: And good morning, your Honors.

Andy Gass from Latham & Watkins, on behalf of OpenAI.

THE COURT: Is that everybody?

All right. Thank you.

Here's what I want to do. We have a couple of hours, if we need it. I'd like to get some parameters set for how we're going to conduct the MDL. I thought about some of these issues and have views. And I'd like some discussion on others. And I intend to decide what I can today and, if need be, not decide some things pending my thinking about it.

The proposed agenda in the report — I'll refer to the report that came in two days late as "the report," the parties will know what I'm talking about. And that agenda on page 2 is fine. I'll basically follow it as we go through things.

I think the first one is appointment of plaintiffs' leadership counsel.

To begin with, I think everybody agrees that we should have two simultaneous tracks on the plaintiffs' side, that is, the authors' actions — which I'll call the class actions — on

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1 one track, and the news actions on the second track. And
2 they'll go forward together.

3 And as of now, at least, on the class actions, we have
4 Tremblay, Silverman and Chabon, which have been all
5 consolidated, so I'll refer to them as the Tremblay action.
6 We've got the Millette action, which I'll refer to as the
7 Petryazhan action. We have Authors Guild and Alter, which I'll
8 refer to as the Authors Guild action. And we've got Basbanes,
9 which has been stayed.

10 On the news actions, we have *The New York Times*, *The*
11 *Daily News*, and The Center for Investigative Reporting, which
12 I'll probably refer to as CIR. And those have been -- they're
13 coordinated simply or consolidated for pretrial purposes only.

14 We have Raw Story, which was before Judge McMahon
15 here. We have The Intercept Media, which was before Judge
16 Rakoff. And again, starting today, we have Ziff Davis.

17 Those are the actions in this MDL as far as I know.

18 So that's really the first decision. I'll get a
19 minute order -- not a minute order, I'll get an order out with
20 my decisions of today. That's the first one that will have two
21 tracks for plaintiffs.

22 On the news plaintiffs leadership counsel, at page 9,
23 the news plaintiffs are requesting four law firms with six
24 attorneys be a leadership committee; and that Ms. Brook also be
25 the liaison for the plaintiffs to both the Court and the

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1 defendants.

2 So would somebody like to speak on behalf of that
3 briefly? That does seem to me to make sense. It's a little
4 overstuffed. But then I'll want to hear from anyone who
5 opposes that. In other words, a leadership committee of the
6 news plaintiffs, four firms, six attorneys; and to make
7 Ms. Brook the liaison attorney.

8 As I see the liaison attorney, it would assist the
9 Court greatly if there's somebody who can coordinate the
10 plaintiffs' positions and meet with the defendants before any
11 application is made to the Court. I think that will
12 significantly smooth things over. There's been some rough
13 patch, I think, with the class action people here, but I think
14 that liaison person will help that.

15 Anyone want to speak -- that's where I am now.

16 Who would like to speak against that, if anyone?

17 All right. Well, then I'll do that. I'm appointing a
18 leadership committee on behalf of the news plaintiffs of Susman
19 Godfrey, Rothwell Figg, Loevy & Loevy, and Klaris Law, with the
20 attorneys of Ian Crosby, Davida Brook for Susman Godfrey;
21 Steven Lieberman and Jennifer Maisel for Rothwell Figg; Matthew
22 Topic for Loevy & Loevy; and Lance Cooney for Klaris Law.

23 All right. And the division, by the way, of myself
24 and Magistrate Judge Wang will be: Magistrate Judge Wang will
25 handle discovery matters.

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1 I don't think I need to do anything with the
2 defendants; they seem to be operating together.

3 But now let's turn to the class plaintiffs' leadership
4 counsel. I have an issue with that. I think it's an
5 invitation for delay and for disputation to have all of these
6 people be leads and involved in the leadership committee.

7 So why doesn't somebody for the plaintiffs -- for the
8 class plaintiffs -- tell me why it's a good idea to have all of
9 those people and all of those firms. The request, to be
10 specific, is four firms as leadership counsel, two from the
11 Authors Guild, two from Tremblay; three interim co-leads;
12 steering committee with a chair.

13 Why doesn't somebody tell me why that bad idea is a
14 good idea.

15 MS. GEMAN: Happy to, your Honor -- your Honors.

16 Rachel Geman.

17 THE COURT: I'm going to ask, because the mics don't
18 seem to be picking it up, to speak -- everyone who wants to
19 speak, first of all, identify who you are and who your client
20 is, because I'm just getting to know you. And speak from the
21 podium. I think that will be better.

22 MS. GEMAN: Thank you, your Honor.

23 THE COURT: I won't hide the ball. I really think I
24 need one interim lead class counsel. I think that's going to
25 be most efficient. And then the work of class counsel can be,

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1 you know, divided by the lead counsel. But having all these
2 people I don't think makes sense for class. I'm willing to do
3 it, I think, for news; they seem to be better organized. But
4 for class, I'm concerned.

5 Go ahead.

6 MS. GEMAN: That you, your Honor.

7 So Rachel Geman, Lieff Cabraser, for Authors Guild and
8 Alter, and here speaking on behalf of the proposed unanimous
9 leadership slate.

10 Your Honor, this case is somewhat unusual in that we
11 are not writing from a blank slate. We have had an efficient
12 current leadership structure, as your Honor noted, of three
13 interim co-lead firms. With the integration of the *Tremblay*
14 matter, the *Tremblay* consolidated matters, we simply propose a
15 modification to make that three into four. This reflects the
16 work that already has been done.

17 With respect to delay and disputations, we actually
18 believe that this structure will ensure the most efficient
19 prosecution of the case. And there has been no -- there have
20 been no disputes.

21 There is no authority of which we're aware requiring a
22 sole lead. We understand this is up to your Honor.

23 THE COURT: We're agreed. There's no requirement.
24 It's a case management issue. And this is the beginning of the
25 MDL. It's not the beginning of the cases; *Tremblay* is farther

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1 along. In fact, the California cases were started earlier.
2 But I do want to set up a structure that will be speedy and
3 efficient, whatever Rule 1 is, to lead to a resolution.

4 MS. GEMAN: Sure.

5 And here we believe a group will do that. That might
6 sound counterintuitive, but we work together very well, very
7 closely; we work not only on this case, but other similar AI
8 cases. This is a big case that is quite far along, and we
9 believe there would be actually more disruption were we to
10 upend the current structure.

11 It seems as though your Honor notes a distinct issue,
12 which is sort of a coordination with the Court. And that does
13 not seem -- and ensuring that that would happen seamlessly and
14 with consistency is not inconsistent with an actual leadership
15 structure that has more than one firm.

16 THE COURT: I'm sorry, say that again. I lost that.

17 MS. GEMAN: Yeah. It seems like your Honor is putting
18 your finger on two different issues. One issue is the number
19 of firms that are the leadership firms. And a distinct issue
20 might be ensuring as an administrative matter that your Honor
21 can turn to -- or the Court can turn for administrative matters
22 to one firm or one person. We respectfully submit in the class
23 context those things are somewhat distinct.

24 We believe that in terms of the prosecution of the
25 case, everything that goes on in the day-to-day --

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1 THE COURT: Let me stop you.

2 I'm not sure they are distinct. They are two
3 different functions, I agree with that. But they are not
4 distinct to the extent that having multiple co-leads makes it
5 more difficult for the co-leads to coordinate in order to
6 present a single view to the liaison counsel to deal with the
7 defendants and then the Court.

8 MS. GEMAN: Your Honor, I would refer to the work
9 that's already been done on a consistent proposal by the
10 current proposed lead as an example of past is prologue.

11 THE COURT: No. But without pushing it too far, it
12 seems to me all that means is that the various plaintiffs firms
13 – which are appropriately competing for positions here – have
14 sort of called a standoff and everybody is a chief.

15 MS. GEMAN: I would respectfully push back against
16 that. It's not a standoff, it's a collaborative work. We have
17 weekly calls. We have a subpoena group where we meet and
18 confer. We jointly participated in ADR. We have jointly
19 handled the depositions that have occurred to date. I'm not
20 talking about a patina of stating something to the Court, I'm
21 talking about the reality of how the case has proceeded.

22 I would also note that there are more than two
23 options. Your Honor has mentioned this possibility of one
24 lead. We have proposed four leads with a steering committee.
25 It would seem to us that, consistent with most big cases that

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1 we're all involved with, that, at minimum, there should be two
2 or three leads and some assistance from the lawyers with whom
3 we've been ably working this whole time. So I would request --

4 THE COURT: All right. Thank you.

5 MS. GEMAN: Thank you.

6 THE COURT: Would somebody like to speak against that
7 structure?

8 MR. SAVERI: Your Honor, if I may.

9 THE COURT: Sure. Go ahead.

10 MR. SAVERI: Joseph Saveri, on behalf of the Tremblay
11 plaintiffs in California.

12 THE COURT: Yes.

13 MR. SAVERI: I'd like to note a couple of things.

14 First, your Honor, I -- my office -- filed the first
15 case in the country. We started this litigation. And so --

16 THE COURT: Bring the mic up to you, sir.

17 MR. SAVERI: I apologize. Is that better, your Honor?

18 THE COURT: Yes.

19 MR. SAVERI: So, your Honor, first, we did file the
20 first case. Since that time, we have been prosecuting the case
21 diligently. There was certainly a time --

22 THE COURT: Well, *Tremblay* is further along, I'm
23 pretty sure. I don't really have a good handle yet on the
24 California cases, but they are further along than we are. But
25 I don't know how efficient it's been.

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1 MR. SAVERI: And I wanted to get to that, your Honor.

2 THE COURT: Ma'am, you can sit down.

3 MR. SAVERI: Since the time that the Tremblay cases
4 were filed and the actions were initiated in the Southern
5 District of New York, despite the fact that the cases were
6 proceeding on separate tracks, which, in my experience doing
7 class actions for decades now, is quite unusual.

8 Despite that, there has been a remarkable amount of
9 coordination between the class plaintiffs representing the
10 respective groups. Despite the fact there wasn't an MDL,
11 despite the fact that the cases were proceeding on separate
12 tracks, we've actually done a remarkable job coordinating.
13 That includes coordinating on things like scheduling, we have
14 taken joint depositions in this case, we have gone to a
15 consolidated mediation in this case.

16 And so, again, this isn't like -- this is not a case
17 where this is the first day of an MDL. This is a very unusual
18 case where we are something like -- depending on how you count --
19 18 to 24 months in. There has been substantial work done I
20 guess on the west coast by the Tremblay plaintiffs, but also
21 the lawyers who have been before you since the beginning of the
22 cases in the Southern District of New York.

23 It's very important to me that that coordination that
24 we've been able to establish be not disrupted but now be
25 continued. And so I want to allay and address any concerns

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1 that the Court has about – I think you used the word
2 "disputation" or disagreement among the class plaintiffs.

3 To the contrary, there is remarkable alignment and
4 collaboration and agreement on key issues. We are now in one
5 place. We are anxious to continue our work together. And so
6 the leadership structure that's been presented to your Honor I
7 think reflects the hard work we've done and what we plan and
8 intend to do in the future.

9 THE COURT: All right. Thank you.

10 I asked for somebody -- if anyone wants to speak
11 against the plaintiffs' position.

12 MR. SLAUGHTER: Thank you, your Honor.

13 James Slaughter, Keker, Van Nest & Peters, on behalf
14 of OpenAI.

15 THE COURT: Just let me find you here, sir.

16 MR. SLAUGHTER: Take your time.

17 THE COURT: Yes, sir.

18 MR. SLAUGHTER: Thank you, your Honor.

19 Your Honor is correct, there should be one interim
20 lead counsel appointed under Rule 23(g) on behalf of the class.
21 This case was brought to the MDL precisely because there was a
22 lack of coordination and a lack of efficiency amongst
23 plaintiffs.

24 THE COURT: Why do you say that? What leads you to
25 say that? I know there was papers put into the JPML, but why

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1 do you say that was the reason?

2 MR. SLAUGHTER: I say a reason, your Honor. One of
3 the reasons was a lack of coordination. We obviously want to
4 make sure that there aren't duplicative inconsistent rulings.
5 But certainly a focus of the JPML briefing was a lack of
6 coordination of depositions because the cases were proceeding
7 on different schedules in different courts; and so there was a
8 lack of coordination and efficiency amongst the plaintiffs and
9 an inability to prosecute the case efficiently.

10 Unfortunately, that has continued since the JPML
11 order. There have been, since April 3rd, more than two dozen
12 third-party subpoenas served by various plaintiffs on 13
13 different --

14 THE COURT: Well, that's going to end.

15 Go ahead.

16 MR. SLAUGHTER: Thank you, your Honor.

17 So we think that there's got to be one lead counsel.
18 We think that that person has to be able to speak on behalf of
19 all counsel. And if you'll see from the C&C statement, your
20 Honor, they have vastly -- between California and New York --
21 different views on what the class may or may not be. And that
22 lead counsel needs to propose a single complaint and needs to
23 get everybody on the same page; because right, now we're not.
24 And we agree fundamentally with your Honor that there should be
25 a single counsel to be able to do those things.

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1 THE COURT: All right. Anyone else?

2 I'll give you an opportunity.

3 MS. GEMAN: Thank you, your Honor.

4 MR. JACOBSON: Your Honor, Jeffrey Jacobson from
5 Faegre Drinker, on behalf of Microsoft.

6 Mostly, your Honor, Ms. Hurst is going to be
7 addressing the Court with respect to the issues in this case.
8 I'm here because I'm sort of the class action guy; been doing
9 this a long time.

10 I came at this similarly to the way your Honor did. I
11 differ from Mr. Slaughter in the sense that I don't -- I'm not
12 here speaking saying that there needs to be one counsel versus
13 a structure. There are some very good attorneys on the other
14 side of this case, and they can work together.

15 And, you know, the "who" is none of my business.

16 The "what," however, is very much our business.

17 And with respect to Mr. Saveri and how well they've
18 been working together, your Honor saw the proposal about where
19 they are right now. We don't know as we sit here what the
20 proposed class is; we don't know what the proposed causes of
21 action are; and we don't know what Microsoft products are at
22 issue.

23 THE COURT: Wait. Wait. That's "easy." I mean, we
24 need a single consolidated class action complaint. That will
25 come. That will give you what you're asking for. I don't

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1 think that directly addresses the composition of a class action
2 leadership.

3 MR. JACOBSON: It may, your Honor, only in the
4 following sense: I don't disagree with that, except for the
5 fact that in their proposal, they didn't explain how they are
6 going to get there.

7 If, when I sit down and Ms. Geman stands back up,
8 Ms. Geman says, Your Honor, we've got a plan. And in a week or
9 two weeks or whatever the date is that your Honor sets, we're
10 going to have a consolidated complaint and here's what -- and
11 here's how we're going to get there, your Honor may be in one
12 place.

13 But part of the issue is that right now, as your Honor
14 may or may not be aware, because you're just kind of getting to
15 know the California cases, there are different competing
16 motions for leave to amend that Microsoft and OpenAI both
17 oppose. One would add an antitrust claim in this case. One
18 would add Microsoft products that haven't been the subject of
19 any discovery. There's a lot going on behind the scenes here.

20 And so when I see my friends on the other side stand
21 up and say, We've been working very well together, it's been
22 two months since consolidation. And the proposal that came in
23 did not give you a timeline about what's coming in, what it's
24 going to say, and how they are going to get there.

25 And so I'm standing up just very briefly, and I'll

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1 stop in 15 more seconds and let the plaintiffs have back at it.
2 But I just want to be clear, the "who" is none of my business;
3 it's up to them. It's not that I disagree with Mr. Slaughter
4 that we would like -- we need to have one person we're dealing
5 with. Because right now, the current structure is that for
6 anything they want to do, they need the approval of everybody
7 at that table, half of that table, the entire gallery and the
8 jury box. I'm sorry, half the gallery and the jury box. And
9 that's a lot of people.

10 So, so long as they empower someone or a couple of
11 someones, I'm good. I think OpenAI will be good. But we've
12 got to, as your Honor said, get ourselves to a place where
13 there is a complaint or a proposed complaint, because if they
14 want to add products and causes of action, we're going to want
15 to have something to say about it if your Honor will let us.

16 Thank you.

17 THE COURT: All right. Ms. Geman.

18 MS. GEMAN: Super briefly, your Honor.

19 We agree with your comment that it's a little bit
20 apples and oranges between the leadership and what the
21 consolidated complaint that we propose to file by June 10th is.

22 But getting to the heart of the matter, if your Honor
23 is not inclined to accept our proposal, we would respectfully
24 request that we have until 5 o'clock today to submit something
25 with whatever the number is that your Honor wants.

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1 THE COURT: Well, I want one interim lead counsel for
2 the class action plaintiffs. You can do that by 5 today?

3 MS. GEMAN: Yes, your Honor.

4 THE COURT: All right. By 5 today, submit who the
5 proposed interim lead counsel is for the class action
6 plaintiffs. All right?

7 And then, assuming there's no dispute, assuming you
8 can present me with one person, I'll want a consolidated
9 amended class action complaint. When do you think your team –
10 you or, rather, the lead counsel – can have that in order, in
11 shape?

12 MS. GEMAN: We had proposed June 10th, your Honor. Is
13 that date agreeable?

14 THE COURT: That's acceptable.

15 Assuming there's a single proposed class action
16 interim lead plaintiff today, a consolidated class action
17 complaint should be filed by June 10, all right. No new
18 products and no new causes of action that have not been
19 asserted -- well, no new products or causes of action; only
20 those that have been already asserted in these cases. None of
21 the new ones on the proposed amended complaints; just the
22 causes of action that are already existing and the products
23 that are already existing.

24 All right.

25 MS. GEMAN: Your Honor --

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1 THE COURT: Go ahead.

2 MS. GEMAN: At the risk of further frustrating your
3 Honor, may one of the other counsel be heard on the subject of
4 the proposed amendments, if your Honor would like to address
5 that now?

6 THE COURT: Yes, of course.

7 I'm sorry, were you done?

8 MS. GEMAN: I wanted to turn -- yes, your Honor. I
9 wanted to turn the floor to Mr. Nelson -- or Mr. Saveri about
10 the subject of the amended complaints, if your Honor will
11 allow.

12 THE COURT: Yes, of course.

13 MR. DIAMOND: Before that, can we have a point of
14 clarification, your Honor?

15 I think all the parties agree that the *Millette* matter
16 is not included in this structure.

17 THE COURT: The what?

18 MR. DIAMOND: The *Millette* matter, also known as the
19 *Petryazhan* matter.

20 THE COURT: That's the YouTube, yeah. Go ahead.

21 MR. DIAMOND: I just wanted to make sure this is not
22 including the *Petryazhan* matter; is that correct?

23 THE COURT: Well, the *Petryazhan* matter, what's the
24 nature of the stay that the parties have agreed in? I take it
25 it's stayed pending class action certification, is that it?

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1 MR. DIAMOND: Yes, your Honor, and/or motion for
2 summary judgment.

3 THE COURT: Yeah, I understand.

4 MR. DIAMOND: Discovery only opened in our case a mere
5 few days before consolidation.

6 THE COURT: Get me a stipulation of the parties. Can
7 you do it by tomorrow?

8 MR. DIAMOND: Yes, your Honor.

9 THE COURT: That's staying the *Millette* or *Petryazhan*
10 – I never know how to pronounce it – action pending either
11 class certification or motions for summary judgment.

12 MR. DIAMOND: Yes, your Honor.

13 THE COURT: That takes care of that.

14 Sir.

15 MR. SAVERI: Joseph Saveri again.

16 So on the issue of --

17 THE COURT: Let me find you on the list. Sorry.

18 MR. SAVERI: On an unrelated note, I'm listed as an
19 attorney at Saveri & Saveri, which is ironic to me, considering
20 that was my father's firm. And I haven't worked for them since
21 I was a young boy. So I guess I'll have to correct that.

22 THE COURT: I have you under Saveri Law Firm. What is
23 the correct --

24 MR. SAVERI: Joseph Saveri Law Firm.

25 When I checked in, it said Saveri & Saveri, Inc.,

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1 which, as it happens, was my father's law firm many years ago.

2 THE COURT: All right. So you want us to have you
3 under Joseph R. Saveri Law Firm?

4 MR. SAVERI: Yes.

5 THE COURT: Done.

6 MR. SAVERI: Thank you, your Honor.

7 Okay. So on the consolidated complaint, I want to
8 make sure I understand your guidance. We had intended to, by
9 the date that's inserted in the schedule --

10 THE COURT: Proposed schedule.

11 MR. SAVERI: The schedule that's found at page 39 of
12 the joint status conference statement.

13 THE COURT: Yes, that's the plaintiffs' proposed
14 schedule.

15 MR. SAVERI: Yeah. To file the consolidated class
16 action complaint by June 10th. And we had intended -- but I
17 think it's different than what -- the direction your Honor just
18 gave -- that we would take that opportunity to synthesize the
19 complaints, including causes of action or complaints or facts
20 which have not been -- which were outside the complaints that
21 are at issue in the respective cases.

22 I understood, but I want to make sure I heard you
23 correctly, that the amended -- the consolidated complaint would
24 only include the claims and causes of action --

25 THE COURT: And products.

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1 MR. SAVERI: -- and products that are subject to the
2 operative complaints in the respective cases.

3 THE COURT: Yes.

4 MR. SAVERI: And so we would intend, consistent with
5 the motions that are already on file, to amend those complaints
6 pursuant to Rule 15. But I guess I wanted to get your Honor's
7 sense about how you would like to sequence that.

8 And there's another issue which I guess we will
9 resolve or deal with --

10 THE COURT: But wait. Let's make sure we're talking
11 about the same thing.

12 MR. SAVERI: Yes, your Honor.

13 THE COURT: What I'm proposing, in order to move this
14 forward, is by June 10, a single consolidate -- not a proposed
15 complaint, a single consolidated class action complaint on
16 behalf of all the plaintiffs.

17 MR. SAVERI: Yes.

18 THE COURT: That's what I see.

19 And what I'm doing -- I'll hear discussion -- is
20 limiting it to the claims that already exist in the action. So
21 I don't foresee motions to further amend the complaints. And
22 because there's a new complaint that will be a single complaint
23 going forward -- and I'm limiting it to the claims that have
24 already existed -- there's no room for proposed amendments.

25 MR. SAVERI: So I want to make sure I understand, your

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1 Honor, that we have, based on the discovery that we've taken
2 and further analysis of the case, proposed supplementation of
3 the complaints that are at issue in the respective cases.

4 Based on the evidence that we've developed and our
5 further analysis of the case, we are interested in pursuing
6 those claims, including additional products, additional causes
7 of action.

8 And so it is our position that we would be entitled to
9 amend, and we would seek -- and we have sought leave in the
10 respective courts pursuant to Rule 15.

11 And so my question to your Honor is: How would you
12 like us to organize that and proceed?

13 THE COURT: All right. Let me hear from -- I actually
14 don't intend to permit further amendments, but let me hear from
15 the defendants.

16 It seems to me all that would do would be to invite
17 another round of Rule 12(b)(6) motions, and would expand
18 discovery, if you're talking antitrust or additional DMCA
19 claims. I don't know what the proposals are. It would extend
20 discovery; it would require briefing and determination of the
21 12(b)(6) motions. It would slow everything down, when the
22 parties have already had full opportunity, it seems to me, to
23 assert their claims.

24 If I'm going to allow amended claims, new claims, new
25 products, it would be a never-ending process.

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1 But let me hear from the defendants.

2 The argument is that the plaintiffs have a right to
3 amend under Rule 15.

4 MS. HURST: Thank you, your Honor.

5 An Annette Hurst from Orrick, Harrington & Sutcliffe,
6 for Microsoft.

7 THE COURT: Again, I'm sorry, let me find you.

8 Yes. Go ahead.

9 MS. HURST: We agree with the Court that those
10 alterations to the scope of the claims should not be permitted.
11 The one thing that all parties agree is that the case should be
12 on the same simultaneous track schedule as the Court noted, and
13 that we should have a single summary judgment deadline to
14 address all these fair use defenses at once, so the Court just
15 has to deal with all that once.

16 What the plaintiffs are proposing, the class
17 plaintiffs are proposing, is it would completely frustrate that
18 objective.

19 THE COURT: No, but what -- I'm sorry, go ahead. I
20 should let the parties talk.

21 MS. HURST: Well, your Honor, not only would they
22 propose to add antitrust claims, which would dramatically alter
23 the scope of the case and necessitate 12(b)(6) motions, as the
24 Court has noted, but the proposed additional products,
25 especially for Microsoft, your Honor, could double or triple

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1 the existing size of fact discovery in this case, when,
2 otherwise, we are poised for the completion of document
3 discovery and embarking on depositions.

4 Do they have a right to amend? They don't have a
5 right to amend under Rule 15, your Honor. We're not within --

6 THE COURT: Leave to amend should be freely granted.

7 MS. HURST: Your Honor, certainly that's true. But in
8 the MDL, the Court has the discretion to put administrability
9 and the need for efficiency in the orderly conduct of the
10 proceedings ahead of that.

11 And, your Honor, certainly this is not a situation
12 where they're forfeiting claims with respect to additional
13 products and the like. Once the Court has ruled on the variety
14 of legal defenses and such, if there are additional claims that
15 can be brought against subsequent products, then those cases
16 can still be brought, your Honor.

17 So nobody is forfeiting anything. But the Court
18 certainly has the discretion, as the administrator of the MDL,
19 to decide that in the orderly conduct of the proceedings, we
20 should lock this down where it is and get on with it on the
21 unified schedule that all parties agree we should have.

22 If they have amended claims, it will derail that.

23 Right now the parties are not that far different in
24 terms of when they say that single summary judgment deadline
25 should be. The plaintiffs say March of '26, the defendants say

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1 November of '26. But if Mr. Saveri's proposal to start
2 amending the pleadings is accepted, that would have to change.

3 THE COURT: Excuse me.

4 You're talking about three to six months, if not more,
5 in delay.

6 MS. HURST: Absolutely.

7 It's more than that, your Honor. Because if the scope
8 of the pleadings is augmented, then the fact discovery is back
9 to, I know, square two in terms of documents and depositions.

10 THE COURT: All right.

11 But let me go back to Mr. Saveri's point, which was,
12 if we don't have an absolute right to amend, certainly the
13 Court should be liberal, pursuant to the federal rules, in
14 granting leave to amend.

15 MS. HURST: Your Honor, it's not necessary --

16 THE COURT: I think that's his best point.

17 MS. HURST: Yeah. Your Honor, certainly the Court has
18 the discretion to say if they have additional claims, they can
19 be brought in separate proceedings.

20 THE COURT: I'm sorry, what does that mean?

21 MS. HURST: Well, your Honor, they can file separate
22 claims for antitrust, if that's what Mr. Saveri wants to do.
23 And that case can be stayed pending the orderly resolution of
24 the MDL proceedings. I mean, obviously we don't encourage
25 that. But to allow it to become at issue in the MDL would

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1 derail the single unified schedule that all parties agree that
2 we should have.

3 Your Honor, Microsoft even offered a tolling agreement
4 to the plaintiffs in New York when they proposed to
5 dramatically augment by adding products and, you know, doubling
6 or tripling the size of the case, just because we recognize
7 that, you know, there's not a forfeiture. However, your Honor,
8 it is also true that the Court has the discretion to deny under
9 Rule 15 in order to conduct the MDL in an orderly fashion.

10 THE COURT: All right. Thank you.

11 Response.

12 MR. SAVERI: Thank you, your Honor.

13 Again, Joseph Saveri.

14 We believe under the rule we are entitled to make the
15 motion under Rule 15 to amend the complaint. That amendment
16 would be based on facts that have come up in the discovery that
17 we've taken, and that would be true in the ordinary course in
18 litigation in federal court. We don't think that the peculiar
19 or the particular posture of this proceeding would change those
20 substantive or procedural rights under the Federal Rules of
21 Civil Procedure.

22 THE COURT: But there's no right to amend, sir.

23 MR. SAVERI: No, but with the right to move to amend.
24 We are entitled to make the motion, based on the requirements
25 of Rule 15, to seek to leave to amend the complaint based on

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1 the case law and the rule itself.

2 Now, we're prepared to do that. In fact, we did that.
3 The respective cases did that in the respective district courts
4 prior to the MDL proceeding. So we've had that motion on file
5 — those respective motions on file — for some time, and they
6 have not been addressed by the respective courts.

7 So all we're really asking for is to have a ruling on
8 the motion for leave to amend that have been pending for some
9 time. By your Court's order, I understand it, the consolidated
10 complaint isn't going to add any new claims; it's just going to
11 bring together what's already at issue in the respective
12 courts. It's going to be a little bit of work because they
13 don't fit exactly together, but that's our job and that's why
14 we need a little time to do that.

15 But once we have done that, we would be -- we would
16 like to -- and I don't want to -- I'm not arguing we have an
17 automatic right to do that, but we should be entitled to make
18 the motion to apply to the Court under Rule 15 to amend those
19 pleadings. And that's all we're seeking to preserve.

20 The other point, your Honor — and maybe this is a
21 different point — is, at some point we have to deal with the
22 fact that there are protective orders that have been issued in
23 the respective cases that, at least for right now, prevent me
24 from having any access to the discovery record that was created
25 in the Southern District and vice versa.

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1 And if we were going to do any kind of work together,
2 we need to address that. That might apply to the complaint,
3 but that's a different issue. But I just want to flag that.
4 Because right now, that is an impediment for us to try and get
5 together.

6 THE COURT: All right.

7 MR. SAVERI: So, your Honor, I don't have anything
8 else to add on that point.

9 MR. BOIES: Your Honor, could I just make one
10 practical suggestion?

11 The Court obviously has the discretion to manage the
12 docket, and either grant or deny the motion to amend.

13 But this is an MDL. The idea that we are going to now
14 take claims that could be adjudicated, that are clearly
15 overlapping, and file them in another court, I just don't think
16 that is consistent with what the MDL was intended to do. The
17 antitrust claim clearly involves the same conduct as the
18 underlying claims.

19 THE COURT: But in terms of managing the MDL, an
20 antitrust claim will send this skittering off into the unknown.

21 MR. BOIES: Your Honor, it may be that the right thing
22 to do is to file it separately.

23 THE COURT: I'm sorry.

24 MR. BOIES: It may be that the right thing to do is to
25 file it separately. But I suspect that what's going to happen,

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1 because the discovery is so overlapping, that they are going to
2 move to bring it here as a tagalong. So now what you're going
3 to have -- now, if they say they are not going to bring it here
4 as a tagalong is a different situation. But given my
5 experience with the way defendants operate, I think --
6 including when I'm representing them, I think that they are
7 going to move to bring it here as a tagalong.

8 Then what you're going to have, is you're going to
9 have that case here anyway. And now the argument is going to
10 be whether you stay that case, which I think would be quite
11 unfair.

12 THE COURT: Would be?

13 MR. BOIES: Quite unfair until this case, which may go
14 on for two years, gets decided.

15 Now, if they tell you that they are not going to bring
16 it here as a tagalong, I'll sit down. And we can bring the
17 case in another court and another court can adjudicate it.

18 But I suspect what they are going to want to do is --
19 because it does have overlap in terms of discovery -- they are
20 going to want to bring it here. And then they are going to be
21 asking you to stay it. And this is going to be taking place
22 now two or three months from now.

23 So I just think, as a practical matter, the Court
24 needs to consider how that antitrust claim -- which is a serious
25 claim -- is going to get adjudicated. If it's going to be in

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1 the MDL, then I think we ought to put it into the consolidated
2 complaint.

3 THE COURT: All right. Let me hear -- please.

4 And then I'll hear from a defendant.

5 MS. GEMAN: Thank you, your Honors. Rachel Geman.

6 A brief substance -- a brief process point on the
7 Alter AG case, and then a brief substance point that I think
8 will allay your Honors' concerns.

9 As Magistrate Judge Wang knows, we did have a hearing
10 about issues in connection with amendments. Magistrate Judge
11 Wang ordered us to file an amended complaint by April 15th.

12 We, the Authors Guild plaintiffs, submitted a proposed
13 amended complaint to defendants on March 19th. Many weeks went
14 by. Nevertheless, despite the, sort of, lack of
15 coordination/cooperation on that, we did file the proposed
16 complaint by April 11th. This was timely.

17 But even if those facts were not true, I just want to
18 be very transparent about what our proposed amendments are to
19 show the Court that they will not slow down discovery, and
20 that, in fact, they will be efficient.

21 With your Honor's permission, I'll just say three
22 things.

23 Your Honor did not mention parties, but just again, in
24 the interest of transparency, a minority of the plaintiffs have
25 wholly owned loan-out companies, like many, many writers. And

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1 so just in the interest of fulsome plaintiff addition, we added
2 those loan-outs. To be clear, we have already produced the
3 discovery from those loan-outs; they are essentially the same
4 as the plaintiffs. There might be a couple more documents, but
5 that's basically done. So that's issue one. And we don't read
6 your Honor's ruling, if it is unmodified, to preclude that
7 administrative step.

8 The second addition that we want to note is that we
9 made explicit models that were already in the case that the
10 Honorable Judge Wang had indicated that discovery was limited
11 to certain models. In our amended complaint, we just simply
12 name what they are as to having them be sort of grouped by
13 functional reference.

14 The third point I'd like to make is that we have
15 proposed adding a vicarious liability claim against Microsoft.
16 We already have a contributory infringement claim against
17 Microsoft, and we can proffer that we do not believe the
18 vicarious claim would add any marginal new discovery.

19 So for these reasons, we want to be transparent about
20 what we see as still permitted under your Court's order, unless
21 the Court modifies the order for more broad amendments. And
22 this hopefully shows the Court that this is not going to slow
23 this case down. We are pushing to be trial-ready in August of
24 2026.

25 THE COURT: You didn't talk about the antitrust issue.

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1 MS. GEMAN: Well, your Honor, just to be very
2 explicit, I'm talking about the proposed amended complaint in
3 the *Authors Guild/Alter* matter. That was about which we sought
4 a motion to amend to file on April 11th in this court.

5 THE COURT: All right. Let me hear from a defendant.
6 And address Mr. Boies's point about tagalongs.

7 MS. HURST: Thank you, your Honor.

8 I do think this underscores why there is the necessity
9 of a single interim lead counsel for the class cases.

10 I think we've heard --

11 THE COURT: All right. That's done.

12 MS. HURST: -- very different visions here.

13 Your Honor, even the news plaintiffs note that they
14 would not like in footnote 21 any amended complaints to result
15 in the extension of discovery or delay of the case schedule.

16 THE COURT: Let me look at that footnote.

17 All right. Go ahead.

18 MS. HURST: The news plaintiffs and the defendants are
19 on the same page here, your Honor, that these proposed
20 amendments to add antitrust claims, to add products which would
21 extend -- dramatically extend the scope of the case would
22 derail the schedule and should not be permitted.

23 THE COURT: What about Mr. Boies's point that all that
24 will do will lead to plaintiffs filing complaints, additional
25 complaints, and then ask that they be joined as tagalongs?

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1 MS. HURST: Well, your Honor, the only reason they
2 would need to file the complaints is if they are concerned
3 about statute of limitations issues. And it seems to me the
4 parties ought to be able to work that out and have tolling
5 agreements so that plaintiffs do not feel that that is
6 necessary.

7 But if they decline to engage in such negotiation and
8 feel it's necessary, then they -- and that they do need to
9 file, then probably the way they've characterized it, there
10 would be overlapping allegations and we would seek to stay
11 those proceedings.

12 I think we should be able to work that out so that
13 it's unnecessary. And we can get to the substance of the
14 issues here, which are so important for this technology which
15 is being implemented all across the country --

16 THE COURT: No, that's a fair point. Go ahead.

17 MS. HURST: I mean, you know --

18 THE COURT: It seems to me it's time. It's time.

19 MS. HURST: Yes.

20 THE COURT: Although it's a brand-new MDL, in my view.
21 The cases have been -- especially the California cases, have
22 been going on. It seems to me there's a public interest in
23 these things being resolved. I am very concerned about
24 amendments and amendments and amendments.

25 Go ahead.

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1 MS. HURST: Your Honor, I think the defendants agree
2 with the Court and submit on that basis.

3 THE COURT: Okay. Look, I don't think I'm saying
4 anything that the parties disagree with. It seems to me that
5 ultimately these matters will resolve themselves on the fair
6 use defense. That's what everybody has been -- that's the
7 subtext here.

8 And it seems to me, in the interest of all the parties
9 and the Court, that that issue be -- that there be discovery on
10 it; that it be -- discovery be closed when appropriate; that
11 there be cross-motions -- that there be motions for summary
12 judgment -- I'm not telling you how to brief it. And my
13 educated guess is that that all will be leading to a fair use
14 opinion.

15 These amendments, including the antitrust amendment,
16 are not getting us there. So I am going to maintain my
17 position that the consolidated amended class action complaint
18 include simply the products and causes of action that have
19 already been asserted.

20 The parties should discuss the tolling issue. It
21 seems to me that's a more efficient way to resolve it. Then
22 there's no issue of a statute of limitations. But, if need be,
23 I'll handle any tagalong actions that come.

24 That's the ruling of the Court.

25 The three weeks from today still stands, assuming the

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1 plaintiffs are able to present a single lead by the end of the
2 day. If they can't, they should submit competing proposals to
3 me by next Wednesday. But I take the statement that the
4 plaintiffs think they can resolve that amongst themselves at
5 face value.

6 All right. Let's move on.

7 MS. GEMAN: Your Honor, just very briefly, at the risk
8 of sounding obtuse — Rachel Geman — was our recitation of our
9 view that the amendments that we've laid out for the *Authors*
10 *Guild* case permissibly within the scope of your ruling?
11 Namely, that those amendments and tweaks are permitted. Was
12 our understanding correct?

13 THE COURT: Tell me what they are.

14 MS. GEMAN: Yes, your Honor.

15 The inclusion of a vicarious infringement claim
16 against Microsoft. Currently, there is a direct and a
17 contributory claim, so this would not entail new discovery.

18 The second is making --

19 THE COURT: No, but won't it involve the 12(b)(6)
20 motion?

21 MS. GEMAN: I mean, that would be a question for
22 defendants. There was no 12(b)(6) motion on the direct or
23 contributory claims; and so I would respectfully be surprised
24 if, certainly as a pleading matter, they would say that we
25 don't satisfy the vicarious standard.

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1 THE COURT: You're saying you think as a pleading
2 matter they would move is what you just said.

3 MS. GEMAN: No, no. Your Honor, I'm saying that they
4 didn't -- there was no 12(b)(6) motion on direct infringement,
5 contributory infringement. We have not heard, and I can be
6 corrected --

7 THE COURT: But I had those in *New York Times*, *Daily*
8 *News* and CIR.

9 MS. GEMAN: I will be corrected by Microsoft if I'm
10 wrong, but I do not believe that the concern raised by
11 Microsoft about the vicarious claim was one of the statement of
12 the elements, but, rather, as part of a welter of discussions
13 about impact on the case.

14 So that would be a question for Microsoft as to
15 whether they would intend to move on a 12(b)(6). Our goal is
16 to keep the current schedule. So if I had a choice between
17 jettisoning that claim -- but I have to say, your Honor, that I
18 don't respectfully see a basis to move to dismiss that claim,
19 but that is a question for Microsoft.

20 Moving to the other two issues, one is simply
21 housekeeping, making explicit models that are already in the
22 case.

23 And the third issue --

24 THE COURT: If there are any models already in the
25 case, that's okay.

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1 MS. GEMAN: Thank you, your Honor.

2 THE COURT: But they have to be in the case already.

3 MS. GEMAN: Thank you, your Honor.

4 THE COURT: Okay.

5 MS. GEMAN: The third issue was simply the fact that a
6 minority of the plaintiffs have loan-out companies, and so
7 those companies would be added as party plaintiffs.

8 To repeat, we have already produced --

9 THE COURT: I don't see any issue with that.

10 Do the defendants see an issue with adding loan-out
11 companies? I take it these have to do with individual authors,
12 is that it, setting up loan-out companies.

13 MS. GEMAN: Yes, your Honor.

14 THE COURT: So that there's some separation of the
15 individual and his or her company.

16 MS. GEMAN: Yes, your Honor.

17 THE COURT: Okay.

18 MS. HURST: Your Honor, we do think the loan-out
19 companies changes the fourth-factor analysis and would
20 necessitate potentially significant additional discovery
21 related to not only those companies, but the markets in which
22 they participate for assessing fourth-factor issues. It could
23 inject a variety of secondary economic considerations related
24 to the exploitation of the works in those cases that are not
25 currently present.

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1 And we also would have said, your Honor, that if it's
2 a standing problem for particular named plaintiffs, they knew
3 about their ownership and exclusive arrangements with respect
4 to their rights when they first filed the case. So that is
5 also – especially in this MDL context – a matter of undue delay
6 on their part. And it could have a significant effect on the
7 scope of discovery.

8 So, your Honor, I would say, in sum, we don't have a
9 problem with adding the vicarious liability claim. I think
10 that's just a different legal theory for facts that are already
11 alleged. And I would agree with Ms. Geman that that's not
12 going to substantially alter the scope of anything; it's
13 already in the cases writ large.

14 I don't know what models Ms. Geman is referring to.
15 So what I would propose, your Honor, is that the plaintiffs
16 provide their proposed class consolidated complaint to the
17 defendants first, to ensure that we agree that, you know, the
18 matters that they present are not beyond the existing scope of
19 the case or reasonable alterations that we've already indicated
20 that we agree to. And then if the parties are unable to agree
21 on that, then they present the motion with whatever are the
22 contested issues.

23 THE COURT: Ms. Geman, speak to the issue of loan-outs
24 substantially changing the discovery and the fair use analysis,
25 because that's what I want to focus on.

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1 MS. GEMAN: Thank you, your Honor.

2 So I feel very confident in saying that there is zero
3 impact. This is simply a matter of an author having a loan-out
4 company. It doesn't change issues about how the books were
5 acquired in this case; it doesn't change issues --

6 THE COURT: Does it change profitability issues?

7 MS. GEMAN: It does not, your Honor. Because this is
8 simply an administrative thing for a writer to have sort of a
9 company to get their royalties. Your Honor is certainly
10 correct that commercialness is a fair use issue, but that goes
11 to the nature of defendants' use; it has nothing to do with
12 whether a plaintiff has a loan-out company.

13 I can submit to you, your Honor, that one of the other
14 cases that Mr. Nelson and I are prosecuting is against a
15 company called Anthropic. In that case, there are plaintiffs
16 and their loan-out companies. There was no issue with the
17 depositions because the plaintiff is the loan-out company. And
18 the depositions were completed.

19 Just a data point, the defendants first asked
20 questions to the plaintiff in her capacity as a writer. And
21 then they sort of put on a different hat and asked questions to
22 them as a loan-out, but it was all the same people, all the
23 same questions.

24 There is zero delay here. We submit that this
25 amendment is timely and this is just administratively

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1 convenient.

2 I feel very strongly in saying this has -- should have
3 zero impact on factor four. And --

4 THE COURT: Go ahead.

5 MS. GEMAN: And then did your Honor have another
6 question about impact on Rule 23? I just want to make sure
7 I've answered your Honor's questions.

8 THE COURT: No, I don't think there is an impact on
9 Rule 23.

10 MS. GEMAN: I would also note, your Honor, that your
11 Honor has expressed the importance -- and Ms. Hurst has
12 expressed the importance -- of streamlining. The loan-outs are
13 already in the Tremblay class. And so this is really more of
14 an interest in conforming the cases. This is, to us, a very
15 important issue that will not create more discovery because,
16 again, this discovery has been produced and will make life
17 easier later on.

18 THE COURT: Discovery has been what?

19 MS. GEMAN: Meaning to the extent that some of the
20 plaintiffs have a loan-out company and there are documents --
21 oh, I'm sorry. I said the word "produced."

22 THE COURT: Thank you.

23 MS. GEMAN: I'm not going to submit that literally
24 every document has been produced; but in the main, there has
25 been no withholding of documents simply for the ancillary fact

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1 that someone has a loan-out.

2 Thank you, your Honor.

3 THE COURT: I understand.

4 Mr. Saveri.

5 MR. SAVERI: Your Honor, thank you.

6 Joseph Saveri again.

7 I just want to point out that this issue with the
8 loan-out corporations, the loan-out corporations are already in
9 our case.

10 THE COURT: They are in *Tremblay* already.

11 MR. SAVERI: Yeah.

12 THE COURT: That's relevant. Go ahead.

13 MR. SAVERI: And then also, because of that, the
14 discovery in the *Tremblay* case has already -- this has already
15 been a focus of the discovery in *Tremblay*, both in terms of
16 document discovery and also, I defended one of the class
17 plaintiffs' deposition. And this was a subject of the
18 interrogation at the deposition.

19 THE COURT: No, but the fact that you're telling me
20 it's in *Tremblay* goes toward my allowing the loan-outs in the
21 consolidated amended complaint. I understand that.

22 MR. SAVERI: Yes.

23 THE COURT: The fact that you're telling me it was a
24 major subject of discussion in the deposition squints in the
25 direction of what the defendant just said, that is, it would

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1 add additional discovery here, if it was such a major subject
2 of the *Tremblay* depositions.

3 MR. SAVERI: Your Honor is correct.

4 To the extent that there is analogous discovery to the
5 *Tremblay* case that has not been conducted here, I'm not
6 familiar with the discovery in the AG case. I just know, your
7 Honor, that with respect to the clients I represent, this issue
8 is already on the table; the discovery has been on the table;
9 and, in fact, depositions have focused on it. So from our
10 perspective, this doesn't add any delay because we've been
11 undertaking the prosecution of those claims already.

12 THE COURT: All right.

13 Here's what I'm going to do: Judge Wang tells me that
14 in an Alter discussion there were explicit models laid out as
15 to what the specifics ones were. I'm going to allow those in
16 the amendment.

17 I am going to allow the loan-outs, given the fact that
18 it's in *Tremblay*. Plaintiffs here are nodding aggressively.
19 And there seems to be no real dispute about the vicarious
20 infringement claims. So that should clear up what the
21 consolidated amended complaint can have.

22 In terms of antitrust, you'll either work out a
23 tolling agreement or drop it or bring it as a separate action.

24 All right. Let's move on.

25 And I think I've indicated this already, but this is

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1 not going to work unless there's some cooperation here, some
2 streamlining. And the theory is with a single interim class
3 action counsel, plus the agreed-upon group of lawyers for the
4 news plaintiffs, the plaintiffs will speak with one voice, that
5 is, the single interim plaintiffs' class action counsel. And
6 they will interact with Ms. Brook as liaison counsel, who will
7 be speaking also with the news plaintiffs and then the
8 defendants.

9 So that by the time it gets to the Court, there's
10 either been agreement, or an application can be made by the
11 Court with your telling me, We tried to work this out – that
12 would be Ms. Brook speaking for that on behalf of the
13 plaintiffs. That's the streamlining that I envision here. And
14 I've already handled that in terms of the complaint moving it
15 forward.

16 Okay. The duties of counsel will be largely what's in
17 the manual on complex litigation. I'll set it forth in an
18 order.

19 Compensation of leadership counsel. I'm certainly not
20 going to deal with that now.

21 Consolidation of the class actions – I've handled
22 that.

23 Additional claims – I've handled that.

24 I don't need a consolidation of the news plaintiffs'
25 complaint. Everybody agrees consolidation of the news

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1 plaintiffs is unnecessary.

2 My notes say *The Times* has an unopposed motion to
3 amend the complaint to add a 1202(b)(1) claim, DMCA claim; is
4 that right, *Times*?

5 MS. BROOK: Yes, your Honor, with one clarification.
6 It's not a new claim, it's just to replead the one that the
7 Court dismissed, so that it is in line with the ones that the
8 Court has allowed to go forward as to *The Daily News* and other
9 news plaintiffs.

10 THE COURT: All right. So why don't you get me a
11 stipulation that says what it is, and that it's unopposed, and
12 I'll sign it.

13 MS. BROOK: Thank you, your Honor.

14 THE COURT: I guess it doesn't have to be a
15 stipulation if you have the agreement from the other side. I
16 leave that to you.

17 Bifurcation damages. I'm not going to do that now. I
18 mean, I don't see any need for bifurcation, unless there's a
19 need to slow this down, so I'm not going to do it. If anybody
20 wants to argue otherwise, I'll hear it.

21 Okay. No bifurcation of damages.

22 This is important — everything is important — but the
23 issue of class certification versus summary judgment, which
24 comes first. I feel fairly strongly about this. I've thought
25 about all these things, that, again, on my theory, that we're

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1 most likely moving toward a determination of fair use, of the
2 affirmative defense of fair use. The way to get there sooner
3 rather than later is by having class certification after
4 summary judgment motions.

5 Anyone want to argue otherwise?

6 In other words, summary judgment briefing for
7 discovery, summary judgment briefing, decision, class
8 certification issues.

9 Sir.

10 MR. NELSON: Thank you, your Honor.

11 Justin Nelson from Susman Godfrey.

12 THE COURT: Just let me find you. Yes, I have you.

13 MR. NELSON: Thank you.

14 We do believe that the class certification issue
15 should come before or certainly, if nothing else,
16 simultaneously with. And we understand your Honor's position,
17 just to be clear. Courts have done it both ways.

18 THE COURT: Yes.

19 MR. NELSON: And if your Honor decides that, it is
20 perfectly within your discretion to do so.

21 We do think from a staging perspective it would be
22 more appropriate to do class certification first. I just
23 argued class certification in the *Anthropic AI* case – which
24 overlaps with these claims – last week in front of Judge Alsup
25 in the Northern District of California. There is a summary

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1 judgment hearing today in *Anthropic* that my partner Rohit Nath
2 is handling. And there are ways to stage it. By the way, the
3 only reason they have summary judgment now -- because we're in
4 the middle of fact discovery there -- is because the defendants
5 wanted an early summary judgment motion on fair use.

6 THE COURT: Wait, wait, wait. I'm sorry. Let me slow
7 down a little so I understand that.

8 Discovery is ongoing. Nonetheless, Judge Alsup is
9 having a summary judgment -- has brought on a summary judgment
10 motion even though discovery is ongoing?

11 MR. NELSON: Yes, your Honor. At defendants' request
12 there, because of the common issue involving fair use --

13 THE COURT: But fair use is for nonexclusive factors.
14 It seems to me, essentially, cover the waterfront in terms of
15 discovery.

16 MR. NELSON: Your Honor, we believe that we win on the
17 merits right now in that *Anthropic* case, but we do have --

18 THE COURT: On summary judgment.

19 MR. NELSON: On summary judgment. Well, to oppose
20 their summary judgment. We have not cross-moved, your Honor.

21 THE COURT: Okay.

22 MR. NELSON: But we believe that we will prevail on
23 that motion with prejudice; but to the extent that the Court
24 disagrees, obviously there is more discovery to come.

25 The point actually is that there are a huge amount of

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1 common issues. The common issues on the class side, with all
2 the books, go factor by factor by factor. There are certainly
3 some issues that require discovery. There have been expert
4 reports preliminarily submitted, there were expert reports for
5 class certification that came in with the class certification
6 motion and response.

7 Our concern with pushing back class certification is
8 the concern that your Honor identified just a few minutes ago,
9 which is that we believe quite strongly that the cases should
10 be resolved quickly; and that pushing back class certification,
11 in fact, will delay ultimate resolution. And we can do it in
12 the course of fact discovery and stage it with it, so that we
13 are teed up along with the news cases so that we can do it
14 simultaneously.

15 If your Honor grants class certification, of course,
16 they have a right to a 23(f), it would not delay the other
17 cases. But at least we have that issue already in the hopper,
18 so to speak, if the Court, the Second Circuit, decides to grant
19 a stay during the 23(f) process.

20 If, of course, we believe that --

21 THE COURT: Wait. I'm sorry.

22 Just do that 23(f) point again.

23 MR. NELSON: So, your Honor, if your Honor grants a
24 class, presumably they are going to move for interlocutory
25 appeal. The Second Circuit will decide whether to stay that

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1 part of it during the course of the 23(f) appeal or not. But
2 regardless, the individual actions are going to go forward.
3 The summary judgment is going to go forward; certainly even the
4 summary judgment with respect to the book authors can proceed
5 in their individual capacities. So it will not delay the
6 resolution of the fair use issues.

7 If your Honor – we think inappropriately so – were to
8 deny class certification, that actually would be important to
9 know earlier so that, therefore, there could be individual
10 suits that would be brought, presumably tagaloned to this same
11 MDL. And instead of having, you know, one class action, we
12 would have tens or hundreds of thousands of individual actions
13 with the same point, which is why we believe a class is
14 superior, but we'll get to that whenever we get to that.

15 But the point is it will not delay the schedule,
16 right, in terms of the main issue of fair use.

17 Your Honor, if we wanted to, we could hold a summary
18 judgment hearing next month on fair use on their argument. I
19 mean, I'm not saying that they want to do that or should do
20 that. I'm saying that the issues are fairly joined right now.
21 There are certainly some factual issues --

22 THE COURT: Yeah, but they are fairly joined, I agree
23 with that, but they are not fairly discovered yet.

24 MR. NELSON: Well, let's take, for example, one
25 example, okay, which is we have two theories of infringement.

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1 The first is the piracy that occurred. And under *Andy Warhol*,
2 each use is a separate infringement. That piracy, that initial
3 download, we have the facts for that. We know what's going on
4 in the market. We know that widespread use of piracy would
5 destroy it under factor four. So with literally a couple of
6 months more of discovery, maybe with a few expert reports, we
7 can get certainly to a resolution of the piracy use of that.

8 Now, there's a separate issue with respect to
9 training, right, which is that they -- if whatever happens,
10 even if they lawfully acquired it, despite the fact that, for
11 example, in the movie context, there's an FBI screen saying
12 that you can't use it except for personal uses, and they
13 take -- however they acquired it, they take it for training
14 without a license. Yes, there will be some issues there.

15 Again, we can do that discovery, I think, quite
16 quickly. And so we believe that those issues are common across
17 all of the class, and that your Honor can stage it so that by
18 the time we get to summary judgment, we can have a class
19 certification certainly hearing, if not an order prior to that.

20 We do expect that in this instance, for example, your
21 Honor would not -- whenever your Honor rules, even on our
22 schedule, would not be the first court to consider class
23 certification, given that Judge Alsup has that issue under
24 advisement right now on a class that mirrors what we have
25 proposed certainly in the *Alter* and *Authors Guild* amended

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1 complaint here.

2 So we do believe that it would be appropriate to stage
3 that first. But, if nothing else, if not first, at least at
4 the same time as summary judgment so that we can proceed first.
5 Remember, the *Authors Guild* and *Alter* class actions were the
6 first filed cases in this Court. And we want to proceed.
7 There is ongoing harm to the market. And having that --

8 THE COURT: I don't understand. Obviously we're going
9 to proceed, that's not at issue. The question is --

10 MR. NELSON: Proceed as a class.

11 THE COURT: This question is the order in which I take
12 the disputes.

13 MR. NELSON: Absolutely, your Honor. That is 100
14 percent right.

15 THE COURT: Discovery is going forward. That's
16 irrelevant to this issue.

17 MR. NELSON: Correct.

18 But final resolution for the class obviously cannot
19 happen until the class resolution is resolved.

20 THE COURT: Right.

21 MR. NELSON: And so being --

22 THE COURT: But that's probably, as you point out, an
23 interim appeal. You haven't yet talked about the possibility
24 of the Second Circuit staying things below while the appeal
25 goes forward.

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1 MR. NELSON: The Second Circuit certainly could stay
2 it with respect to the class side of it. But, again, for the
3 individuals, they have the claims in their individual
4 capacities anyway. The fair use analysis will be the same.
5 And certainly for the news plaintiffs, which has nothing to do
6 with this, they will be going forward regardless.

7 So our only point, your Honor – and I hear you – and
8 again, it would not be inappropriate --

9 THE COURT: Why don't you conclude. Go ahead.

10 MR. NELSON: We want to be able to go to trial with a
11 class as fast as possible. We believe that the best way to do
12 that is to stage class certification first or simultaneously
13 with summary judgment, so we can do that.

14 Thank you, your Honor.

15 THE COURT: Okay. Thank you.

16 Well, that puts a different slant on it.

17 Let me hear from any defendant who wants to tell me
18 that they agree with my initial thinking.

19 MR. SLAUGHTER: Thank you, your Honor.

20 James Slaughter, Keker, Van Nest & Peters, on behalf
21 of OpenAI. And I know Ms. Hurst, on behalf of Microsoft, will
22 want to be heard on this issue as well.

23 Your Honor had it exactly right in your first
24 inclination, that the orderly process and the efficient process
25 here is, as the Second Circuit endorsed in the *Authors Guild v.*

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1 Google matter, 721 F.3d 132, which is to have summary judgment
2 precede class certification precisely because in a copyright
3 action such as this and such as existed in the *Google Books*
4 case, the fair use defense "in the first instance will
5 necessarily inform and perhaps moot our analysis of many class
6 certification issues." So the efficient way, as the Second
7 Circuit endorsed, is to proceed with class -- with a summary
8 judgment first.

9 The idea that it would be equally efficient to do it
10 simultaneous is defeated just by what the *Google Books* case
11 said, which is, the whole purpose of doing the fair use
12 analysis initially as part of the dispositive motions is to get
13 that information and to get those rulings because it will
14 necessarily inform the class cert. analysis.

15 So your Honor's inclination was exactly right, and we
16 think that that's the way that we should proceed.

17 MS. HURST: Your Honor, I would just briefly add as
18 well --

19 THE COURT: For the record, say your name, please.

20 MS. HURST: Yes, your Honor.

21 Ms. Hurst, for Microsoft.

22 I think the reason plaintiffs are incorrect about the
23 effect of a 23(f) appeal is that the dividing line would not be
24 between class and individual claims. But the fact that there's
25 this overlap between the fair use factors and the class

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1 certification considerations means that a 23(f) appeal would
2 bring the fair use consideration to a halt. And that would
3 affect not only the class plaintiffs, the individual-named
4 plaintiffs in their capacity, but also the news plaintiffs who
5 are basically opt-out class plaintiffs here.

6 And so to have the 23 considerations either
7 simultaneously or before the fair use defense would completely
8 stymie what we're trying to accomplish here and, as
9 Mr. Slaughter noted, deprive the Court of the efficiency of
10 fair use going first.

11 THE COURT: In the Second Circuit, it seems to me that
12 there's a strong preference for certification following summary
13 judgment. So I'm going to do what I consider the standard
14 procedure in the Second Circuit. I'd be interested in
15 following what happens in that Alsup case; but here, we're
16 going to do summary judgment first.

17 MR. NELSON: Thank you, your Honor.

18 THE COURT: I'm inclined to have the parties schedule
19 reply expert reports, given the obligation of the party that
20 bears the burden of proof to go first. As of now, I'll allow
21 reply expert reports.

22 Next is the technology tutorial.

23 I accept the point that was made in the report that
24 we've already had it. But I can tell you, each time I hear it,
25 I learn a little more and I feel a little more comfortable with

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1 the technology. So A, I don't mind hearing it for the second
2 time; and B, undoubtedly there's more that the parties will
3 want to tell me — tell us — in terms of technology. So I'm
4 strongly inclined to have the second technology tutorial and
5 I'm not foreclosing additional ones. But right now -- I think
6 I have a pretty good grasp of it, but we're going to have a
7 second technology tutorial.

8 Have the parties talked about dates for that? I'm
9 pretty flexible.

10 MS. BROOK: Davida Brook of Susman Godfrey.

11 No, your Honor. But I'm happy to have that
12 conversation with both my friends on the class side and on the
13 defense side and report some dates to the Court.

14 THE COURT: Yes, please.

15 MS. BROOK: Does the Court want to give some
16 parameters on how soon it would like that tutorial?

17 THE COURT: I don't think there's an emergent need,
18 but certainly I would think June or early July, something like
19 that.

20 MS. BROOK: That you, your Honor.

21 THE COURT: Okay.

22 MR. SLAUGHTER: Thank you, your Honor.

23 James Slaughter, on behalf of OpenAI.

24 We'll work with the plaintiffs to schedule that and
25 propose a date to your Honor.

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1 THE COURT: Okay.

2 Protective order. That's going to be handled. I
3 believe the parties have a conference next week.

4 JUDGE WANG: Tuesday morning.

5 THE COURT: So that will be handled then, along with
6 ironing out a deposition protocol and discovery schedules.
7 Again, Judge Wang will be handling discovery, including
8 third-party discovery.

9 I think that basically handles everything except the
10 case schedule, okay. Now, surprise, surprise, the plaintiffs'
11 proposed schedule was too aggressive and the defendants'
12 proposed schedule was too unaggressive.

13 I think, given the rulings today, that will help the
14 parties amend their schedule. Certainly the ordering of
15 summary judgment and a certification, certainly the timing on
16 the consolidated class action complaint, certainly no
17 additional claims should help the parties do that, come up with
18 another schedule. If you can come up with a joint schedule,
19 fine. If you can't, submit something to me.

20 When do the parties want to do it? We're talking
21 about -- are we talking about June 10 for the consolidated
22 complaint?

23 MS. BROOK: Yes, your Honor.

24 Davida Brook of Susman Godfrey.

25 We would appreciate there being a date certain for the

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1 parties to submit either a stipulated schedule or disputed
2 schedules for the Court's consideration. And June 10th or,
3 frankly, earlier would be perfectly amenable to, I believe,
4 both the news plaintiffs and the class plaintiffs.

5 MR. SLAUGHTER: Your Honor, James Slaughter, on behalf
6 of OpenAI.

7 Part of the issue there is we will not -- if we do it
8 on June 10, we will not have had the benefit of seeing that
9 proposed consolidated class action complaint.

10 THE COURT: I think the consolidated complaint should
11 come first, I agree with that.

12 MR. SLAUGHTER: So can I suggest, your Honor, perhaps
13 two weeks after June 10 to submit proposed schedules so that we
14 can take into account what we learned from the proposed class
15 action complaint?

16 MS. BROOK: Your Honor, might I suggest that's maybe a
17 little too unaggressive, maybe mine was a little too
18 aggressive. Shall we split the baby and do one week after
19 June 10th.

20 THE COURT: That's exactly what was bubbling to the
21 surface. One week after June 10, which I assume is June 17.

22 MS. BROOK: Thank you, your Honor.

23 MR. SLAUGHTER: Thank you, your Honor.

24 MS. BROOK: And, your Honor, if I may, just to clarify
25 -- perhaps this is for Magistrate Judge Wang as well -- I would

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1 posit that that schedule should include all the discovery
2 deadlines as well, and we'll submit a complete schedule for
3 your Honors' consideration.

4 THE COURT: Yes.

5 MS. BROOK: Thank you.

6 THE COURT: Is there a briefing schedule on the Raw
7 Story motion for reconsideration? I just don't know the state
8 of that.

9 MR. TOPIC: Good morning. Matt Topic, Loevy & Loevy,
10 for Raw Story and Alter Net, who are the two plaintiffs
11 together in that case.

12 We filed the motion to reconsider, and then the
13 briefing was stayed by your first order. So we do not have a
14 briefing schedule. I'm also happy to just argue it out right
15 now if the Court would like. It's very straightforward.

16 THE COURT: Let me hear it.

17 MR. TOPIC: So what we're seeking --

18 THE COURT: I'm sorry.

19 MR. GRATZ: Your Honor, Joe Gratz, representing
20 OpenAI.

21 We would like the benefit of an opposition brief
22 before oral argument.

23 THE COURT: I fully understand that. But this is a
24 preview. This is an appetizer here. No, no, the brief --

25 MR. GRATZ: I look forward to serving the second

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1 course of appetizers.

2 THE COURT: All right.

3 Starting to fall apart here. Go ahead.

4 MR. TOPIC: I apologize if I'm responsible for that.

5 So Judge McMahon denied us leave to file an amended
6 complaint that would have brought the Raw Story DCMA claim in
7 line with the allegations that your Honor has allowed for CIR
8 and for *Daily News*, and you've now allowed --

9 THE COURT: I know. But it seems to me the issue is,
10 if I can say, a cute one; that is, if I deny the motion for
11 reconsideration, it goes to the Second Circuit, and we get a
12 nice clear, hopefully, determination on that DMCA claim.

13 If, on the other hand, I say it's as I had already
14 determined it, then it gets folded into this. It's the, I
15 don't know, perhaps unseemly position that two different judges
16 have come out two different ways. No, that's not unseemly,
17 that's the way the law developments.

18 But here, it would be simply because the case was sent
19 to another judge, there's the possibility of the opposite
20 result. I'm not sure that's a good way to run the railroad.

21 MR. TOPIC: We cited some cases, including Second
22 Circuit cases, that talk about this situation where there has
23 been an MDL created. The transferee judge, your Honor, has the
24 ability and the obligation to correct any decisions by the
25 prior judge that you believe to be erroneous. And the point of

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1 the MDL — and we heard it again today from the defendants — was
2 to have consistent rulings. And we have two irreconcilable
3 inconsistent rulings that, according to their own arguments for
4 why there should have been an MDL, those should be brought into
5 conformance with each other.

6 THE COURT: Preview.

7 MR. GRATZ: Course two of appetizers, your Honor.

8 Joe Gratz at Morrison & Foerster, for OpenAI.

9 First of all, your Honor is right. Denying the motion
10 for reconsideration will allow this issue to go to the Second
11 Circuit and will allow us to get some additional guidance on
12 the issue presented which may shed light for other claims.

13 The second point --

14 THE COURT: Yes. But now that it's under my aegis,
15 how can I in good faith let something proceed where I've stated
16 my disagreement with it?

17 MR. GRATZ: The answer, your Honor, is that Judge
18 McMahon's order is a final order. It granted with prejudice a
19 motion to dismiss. And that is a final order that is subject
20 only to perfection into a judgment and then appeal, or a Rule
21 60 motion to amend a final order.

22 And the standard to amend a final order is much higher
23 than, Well, there's a new judge assigned. It's that something
24 was overlooked or there's been an intervening change in law,
25 none of which, as we look forward to outlining in our

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1 opposition, is met here.

2 The other issue, your Honor, is that the standards
3 applied in the cases are actually -- the cases are actually not
4 in conflict, because in the *Raw Story* case, there was no
5 showing of any of Raw Story's material appearing in the output,
6 despite an opportunity to amend to add that allegation. It's
7 just not there in the same way that it is in, for example, the
8 *CIR* case, where your Honor reached his view on the 1202 issue.

9 And so for all of those reasons, we think that the
10 right course is to enter final -- deny the Rule 60 motion,
11 because the standard isn't met, enter final judgment, and have
12 it go to the Second Circuit, where they can tell us something.

13 THE COURT: So you have a MDL where the transferee
14 judge is allowing there to be differing views on the record.

15 MR. GRATZ: So I don't think there are differing
16 views, your Honor, because I think the standard that your Honor
17 applied in the *CIR* case, if applied to the facts pleaded in the
18 *Raw Story* case would actually lead to dismissal because the
19 basis in the *CIR* case for standing was that they could make it
20 output at least some of their stuff.

21 And in the *Raw Story* case, even after an opportunity
22 to amend, there is not such an allegation. And that's what
23 makes those two things not incompatible. But this is just a
24 different set of facts that does not meet the standard your
25 Honor set in ruling on the motions to dismiss.

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1 THE COURT: When can you get your opposition briefing?

2 MR. GRATZ: Two days, your Honor.

3 THE COURT: Absolutely.

4 MR. GRATZ: I guess two days would put us on Saturday.

5 So can I have till Monday, your Honor.

6 THE COURT: Monday is a holiday. You can have till
7 Tuesday.

8 MR. GRATZ: Tuesday. Thank you, your Honor.

9 THE COURT: And that's May 27.

10 And what do you want for a reply?

11 MR. TOPIC: Could I have one week, your Honor?

12 THE COURT: June 2 for reply in *Raw Story*.

13 Where do we stand on Ziff Davis? As I said, it just
14 hit the docket today.

15 MS. BROOK: Your Honor, I'll refer to my colleague
16 Mr. Coonce to the extent things get too specific. But on
17 behalf of the news plaintiffs, including Ziff Davis, I think
18 there's just a couple quick requests.

19 We've already been working incredibly well with
20 counsel for Ziff Davis who have come in and made every effort
21 to get up to speed as quickly as possible. To that end, I
22 believe they have three main requests for this Court, one of
23 which is they need a date set for the answer to their pending
24 complaint. That would have been due, your Honor, absent this
25 MDL proceeding, earlier this week on May 20th.

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1 I'll propose — though I don't believe we have run this
2 by defense counsel yet, but I'll propose June 10th, the same
3 date that class plaintiffs have been ordered to submit their
4 consolidated amended complaint.

5 That's issue one, your Honor.

6 THE COURT: Just a moment.

7 The request was what now?

8 MS. BROOK: The request, your Honor, was for
9 June 10th, whereas it was previously due May 20th.

10 THE COURT: All right. I have no problem with that.

11 June 10th for the answer due in Ziff Davis.

12 Go ahead. What else?

13 MS. BROOK: Two other related points, your Honor.

14 One, I believe that counsel for Ziff Davis would
15 appreciate guidance from this Court that discovery as to Ziff
16 Davis is considered open; and that they can start participating
17 in that process freely as of this afternoon.

18 THE COURT: Seems to me they should.

19 JUDGE WANG: Yes. And we'll see you on Tuesday as
20 well.

21 MS. BROOK: Thank you, your Honor.

22 They look forward to it.

23 THE COURT: Do they?

24 MS. BROOK: On a related note, I believe they have
25 made a request already of counsel for OpenAI that they make the

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1 previously propounded discovery -- previously issued discovery
2 to the other news plaintiffs available to Ziff Davis
3 immediately. They've agreed to abide by the existing
4 protective order in the news cases pending any entry of a more
5 consolidated protective order. And so, again, on a related
6 note, they would just request that OpenAI make that discovery
7 available as soon as practicable.

8 JUDGE WANG: Can OpenAI do that?

9 MR. SLAUGHTER: Your Honor, James Slaughter; Keker,
10 Van Nest & Peters, on behalf of OpenAI.

11 I'll need to check with my colleagues on that, judges,
12 and can get back to be prepared to respond to that, if it's
13 okay with you, your Honors, when we have the conference on
14 Tuesday, the 27th, with respect to that.

15 I did want to respond just on the documents. I did
16 just want to respond to a couple of things.

17 One, with respect to response to the complaint,
18 June 10 is acceptable obviously for the response to the
19 complaint. It's a response. And not necessarily --

20 THE COURT: What you're saying is you intend to move
21 to dismiss, is that what you're saying?

22 MR. SLAUGHTER: Well, it depends, your Honor. The
23 answer is potentially. And it depends upon what's in that case
24 as a tagalong and not. Consistent with what your Honor ruled
25 earlier today, we understand that these consolidated MDL

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1 proceedings are going to be the claims that were -- existed as
2 of the dates of the respected news and class plaintiffs
3 complaints.

4 The Ziff Davis complaint is broader; it has additional
5 products, it has additional claims. As a tagalong action, your
6 Honor, you obviously have authority to manage that docket. And
7 consistent with what you suggested earlier, there's either
8 going to have to be, sort of, two ways forward: Either Ziff
9 Davis is stayed or it proceeds on the common issues that are
10 currently pled in these coordinated proceedings, the claims and
11 the products currently in the case. And we can proceed on
12 those common issues, but we don't want -- for the same reasons
13 that your Honor articulated earlier -- to have this tagalong
14 case then upset the appplecart with respect to the other issues.

15 MS. BROOK: Your Honor, Davida Brook of Susman
16 Godfrey.

17 I think Mr. Boies had it right. You can't have your
18 cake and eat it too. It would be very uncommon for a court to
19 stay all cases at this point in an MDL proceeding. OpenAI
20 moved to transfer the *Ziff Davis* case to this Court, to this
21 MDL. And it has now been transferred. Their case is largely
22 duplicative with the existing cases. They have agreed against
23 maybe --

24 THE COURT: Well, I thought the suggestion was made
25 that it's not.

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1 MS. BROOK: I don't know if my friend on the other
2 side was saying that it's not largely duplicative. There are
3 some differences. But it is largely duplicative; it is largely
4 overlapping. Most of the discovery has already taken place.
5 And the discovery schedule that was put forth by either of the
6 plaintiffs, the proposed schedule or by the defendants, would
7 allow for Ziff Davis, as currently pled, to be incorporated
8 into this MDL. And we think that they, having moved Ziff Davis
9 into this action, into this courtroom, that should be allowed
10 to proceed.

11 MR. SLAUGHTER: May I be heard, your Honor?

12 THE COURT: Yes.

13 MR. SLAUGHTER: Of course, we had an obligation under
14 the JPML rules to make our motion; so the suggestion that it
15 was our choice is inaccurate.

16 And, of course, tagalong cases are often treated
17 differently than the core actions. We're not suggesting,
18 contrary to what my -- what Ms. Brook suggested, we're not
19 suggesting staying the core actions. We're prepared and want
20 to proceed swiftly.

21 All we're suggesting is, as a tagalong action, which
22 can be treated differently and should be, it should not unduly
23 expand the scope. It has, as I said, additional claims; it
24 proposes additional products which will have all of the
25 impacts --

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1 THE COURT: Yeah, but Ms. Brook's point was you wanted
2 the MDL.

3 MR. SLAUGHTER: We had an obligation, your Honor,
4 under the JPML's rules to notify the JPML and transfer into the
5 court, absolutely. But that doesn't mean, your Honor, that
6 this case, which admittedly could have been brought a year ago,
7 their allegations in their complaint say, Hey, we've been
8 talking to you about this for a year, that it should come in
9 and then expand discovery and expand claims. We're prepared to
10 proceed — and we think we should — on the common issues and on
11 the common claims.

12 THE COURT: All right. This is what you do: We have
13 a complaint. You file your response. You can move to dismiss
14 on any grounds you want, but we've got a complaint.

15 MR. SLAUGHTER: Thank you, your Honor.

16 THE COURT: That's by June 10.

17 I think that handles it.

18 We need a schedule.

19 First we need a lead counsel for the class actions.

20 We need an agreed-upon schedule between the parties or
21 competing schedules to me.

22 We've got the Ziff Davis motion.

23 The parties will proceed with discovery.

24 There's a conference next Tuesday with Judge Wang on
25 discovery that will involve, at a minimum, not only a schedule,

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1 but deposition protocols and protective orders. Let's get all
2 of those out of the way, and then we can move forward.

3 All right. I think we've done quite a bit.

4 Unless there's anything else -- oh, I know. I don't
5 think -- Magistrate Judge Wang thinks we don't need monthly
6 discovery meetings. The judge is certainly capable of calling
7 meetings when she thinks it's appropriate, and the parties are
8 certainly capable of telling her that they want a conference.

9 All right.

10 JUDGE WANG: I'll add to that, and we'll get into it
11 more on Tuesday morning, but the structure we've had with the
12 S.D.N.Y. cases, with limited deadlines for filing and then the
13 charts, have been extremely helpful to the Court, and I plan to
14 continue that.

15 So for the new lawyers and the new parties who have
16 recently been brought into the court, you'll see what we mean
17 when you look at the dockets. Thanks.

18 THE COURT: All right. This MDL has been launched.

19 Let's have clear sailing ahead.

20 Thank you, all.

21 * * *